

Voluntary Assisted Dying in Tasmania

Guidelines for Determination of Persons with a Special Interest

Date: 11 October 2022

About this Document

The *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (the Act) allows an *eligible applicant* to apply to the Voluntary Assisted Dying Commission (the Commission) for a review of certain decisions (reviewable decisions).

An *eligible applicant* is:

- a person who is the subject of a reviewable decision, or the person's agent, or
- a person that the Commission is satisfied, after having considered guidelines issued by the Commission under section 118 of the Act, has a special interest in the medical treatment and care of a person who is the subject of a reviewable decision.

This document constitutes the *Guideline* issued under section 118 of the Act.

This document has been approved by the Voluntary Assisted Dying Commission. To contact the Voluntary Assisted Dying Commission, call 1800 568 956 (toll-free), email vad@health.tas.gov.au or send a letter to GPO Box 125, HOBART TAS 7001.

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What is Voluntary Assisted Dying?

Voluntary assisted dying is a process that enables a person who is suffering from a terminal medical condition to legally access a substance to end their life, with support and assistance from medical practitioners.

The person can choose to take the substance themselves or to have it administered to them by, or with help from, a medical practitioner or registered nurse.

Voluntary assisted dying in Tasmania is regulated by the Tasmanian *End-of-Life Choices (Voluntary Assisted Dying) Act 2021* (the Act). The Act identifies when a person in Tasmania is eligible to access voluntary assisted dying and sets out the steps in the voluntary assisted dying process. It also establishes the Voluntary Assisted Dying Commission.

The Act can be accessed from www.legislation.tas.gov.au

Eligibility to Access Voluntary Assisted Dying

A person is eligible to access voluntary assisted dying in Tasmania if they meet the eligibility criteria.

Age

The person must be an adult (18 or older).

Residency

The person must be an Australian citizen or permanent resident or have lived in Australia for at least three years at the time they make their formal First Request. The person must have also been living in Tasmania for at least 12 months, continuously, immediately before they make their formal First Request.

Medical Requirements

The person must have an advanced, incurable, and irreversible condition that is not treatable in a way that the person finds acceptable, and that is expected to cause their death within six months, or within 12 months if the condition is neurodegenerative.

The person must also be experiencing persistent suffering linked to their condition that **they** find intolerable and that cannot be treated in a way that **they** find acceptable.

Voluntariness

The person must be acting voluntarily. That is, they must be acting without coercion (feeling pressured by others) or duress (force) or because they feel threatened or that they will be punished or treated badly, or more favourably, in some way.

Decision-Making Capacity

The person must have decision-making capacity throughout the voluntary assisted dying process, including when they give their Final Permission.

This means that a person must have the capacity to:

- understand the information or advice that they need to be able to make the decision,
- remember the information or advice for long enough to be able to make the decision,
- use or evaluate the information or advice to make the decision, and
- communicate the decision, and their opinions about the decision, in some way.

How is a Person's Eligibility Determined?

The voluntary assisted dying process has a number of formal steps, with the person's Primary Medical Practitioner, Consulting Medical Practitioner, or Administering Health Practitioner, determining the person's eligibility at each point.

Review of Decisions

Section 95 of the Act, provides for an *eligible applicant* to apply to the Voluntary Assisted Dying Commission for a review of a decision, made by a person's Primary Medical Practitioner, Consulting Medical Practitioner, or Administering Health Practitioner, that the person:

- meets, or does not meet, the residency requirements, or
- has, or does not have, decision-making capacity, or
- is, or is not, acting voluntarily.

These decisions are referred to in this document as *reviewable decisions*.

An *eligible applicant* is:

- a person who is the subject of the *relevant decision* (the person who is seeking to access, or who is accessing, voluntary assisted dying), or
- an agent of a person who is the subject of a *relevant decision*, or
- **any other person whom the Voluntary Assisted Dying Commission is satisfied has a special interest in the medical treatment and care of a person who is the subject of a reviewable decision.**

Section 118 of the Act requires the Voluntary Assisted Dying Commission to prepare and issue guidelines for the purposes of deciding whether a person has a special interest in the person's medical treatment and care.

When will a Person have a Special Interest?

A person may have a special interest in the medical treatment and care of a person who is the subject of a reviewable decision if their interest is beyond that of any other member of the public generally, and beyond that of a person with an ordinary interest in the medical treatment and care of a person. It is the Voluntary Assisted Dying Commission's role to determine if the person's interest is "special" such that they should be permitted to apply for a review of a decision.

The Voluntary Assisted Dying Commission will consider all of the circumstances surrounding the nature of a person's interest, including, but not limited to:

- the nature and extent of the relationship between the person claiming the special interest and the person who is seeking to access, or who is accessing, voluntary assisted dying,
- any particular knowledge of, understanding of, or insight that the person claiming the special interest has into the other person's medical treatment and care, or other relevant circumstances,
- whether the person claiming the special interest is likely to gain an advantage if the application succeeds or to suffer some disadvantage if the application fails,
- the views of the person seeking to access voluntary assisted dying as to the special interest claimed by the person, and
- the consequences of the Voluntary Assisted Dying Commission's decision for the person who is the subject of the reviewable decision.

How will the Commission Make its Decision?

Legislative Requirements

The Voluntary Assisted Dying Commission will determine whether a person is an *eligible applicant* on the basis of their special interest in the medical treatment and care of the person seeking to access voluntary assisted dying. The Voluntary Assisted Dying Commission will make this determination after having considered these guidelines in so far as they relate to the person who is the subject of the reviewable decision, noting that under section 96 of the Act, no further action that forms part of the voluntary assisted dying process may be taken until an application for review of a reviewable decision is determined or dismissed.

In deciding whether a person has a special interest in the medical treatment and care of the person, the Voluntary Assisted Dying Commission is committed to ensuring the autonomous and voluntary decision-making of people seeking to access voluntary assisted dying and ensuring the protection of people who may be vulnerable to abuse and exploitation, having regard to each of the objectives and principles as set out below.

The Act's objectives are:

- to provide, to persons who are eligible to access voluntary assisted dying, an efficient and effective process to enable them to exercise their choice to reduce their suffering by ending their lives legally, and
- to ensure that the process provided for the exercise of that choice protects and prevents persons from having their lives ended unwittingly or unwillingly, and
- to provide, in certain circumstances, legal protection for persons who choose to assist, or who choose not to assist, such persons to exercise their choice to end their lives in accordance with that process.

The Act's principles are:

- every human life has equal value,
- a person's autonomy, including autonomy in respect of end-of-life choices, should be respected,
- a person has the right to be supported in making informed decisions about the person's medical treatment, and should be given, in a manner the person understands, information about medical treatment options, including comfort and palliative care and treatment,
- a person approaching the end of life should be provided with high-quality care and treatment, including palliative care and treatment, to minimise the person's suffering and maximise the person's quality of life,
- a therapeutic relationship between a person and the person's registered health practitioner should, wherever possible, be supported and maintained, and
- a person should be encouraged to openly discuss death and dying, and the person's preferences and values regarding their care, treatment and end of life should be encouraged and promoted,
- a person should be supported in conversations with the person's registered health practitioner, members of the person's family and carers and the community about treatment and care preferences,
- a person is entitled to genuine choices about the person's care, treatment, and end of life, irrespective of where the person lives in Tasmania and having regard to the person's culture and language,
- a person who is a regional resident is entitled to the same level of access to voluntary assisted dying as a person who lives in a metropolitan region,
- there is a need to protect persons who may be subject to abuse or coercion, and
- all persons, including registered health practitioners, have the right to be shown respect for their culture, religion, beliefs, values, and personal characteristics.

Administrative Requirements

Upon receiving an application from a person claiming to have a special interest, the Voluntary Assisted Dying Commission will:

- determine, declare, and if necessary, manage, any conflicts of interest, and
- consider the person's explanation of the nature and extent of their interest in the medical treatment and care of the person who is the subject of the reviewable decision, and
- obtain the views of the person seeking to access voluntary assisted dying as to the interest of the person claiming to have a special interest, and
- inform itself on any matter relating to the application and the applicant as it thinks fit, including by requiring a party to proceedings to lodge evidence, or documents, that are in the party's possession and that may be relevant to the proceedings, within a specified time, and
- record the issues and relevant considerations that were taken into account, and how those considerations were evaluated by the Voluntary Assisted Dying Commission in making the decision, and
- provide the applicant with notice of the Voluntary Assisted Dying Commission's decision.



Tasmanian
Government

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